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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VIRGINIA MILANES, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	ECF Case
v.	:	
	:	08 Civ. 2354 (LMM) (KNF)
MICHAEL CHERTOFF, <i>et al.</i> ,	:	
	:	
Defendants.	:	
-----X		

DEFENDANTS' LOCAL RULE 56.1(a) STATEMENT

Defendants Michael Chertoff, Jonathan Scharfen, Andrea Quarantillo, Michael B. Mukasey, and Robert S. Mueller, III, respectfully state pursuant to Local Civil Rule 56.1(a) that there is no genuine issue to be tried as to the following facts that are material to defendants' motion, in the alternative, for summary judgment with respect to plaintiffs' claims pursuant to 8 U.S.C. § 706(1):

1. United States Citizenship and Immigration Services ("USCIS") is the agency with responsibility for processing naturalization applications. (8 U.S.C. §§ 1421(a), 1443(a);

Homeland Security Act of 2002, Pub L. No. 107-296, Subtitle E, § 451(b)(2), 116 Stat. 2135, 2196 (Nov. 25, 2002); 8 C.F.R. §§ 100.2(a), 310.1(b).)

2. In January 2008, USCIS estimated that, on average, naturalization application processing times were approximately 16 to 18 months. (CIS006240). In April 2008, USCIS announced that because of increased staffing and other resources, it had reduced its estimate of naturalization application processing times to 13 to 15 months. (CIS006388).

3. Contributing factors to the length of average processing times are (a) the requirement that USCIS obtain a definitive response from the FBI name check process prior to adjudicating an application (1997 Appropriations Act, 111 Stat. at 2448-49; H.R. Rep. No. 105-405, at 106 (1997) (Conf. Rep.)), and (b) the unprecedented “surge” in applications in June and July 2007 (CIS006279).

4. In individual cases, applications may take longer than the average processing time for various reasons, including an FBI name check that is still pending, the need in some cases for an applicant to submit additional information not contained with his or her application, or the failure of an individual to pass the tests given at his or her naturalization examination. (CIS006389-90).

5. USCIS and FBI have undertaken significant efforts to reduce the effect of the FBI name check on naturalization application processing times. These efforts have included:

- a. Increases in funding. (FBI000001; FBI000004; FBI000041; CIS006307-24; Declaration of Robert William Yalen (“Yalen Decl.”), Ex. D); Consolidated Appropriations Act, 2008 (the “2008 Appropriations Act”), Pub. L. No. 110-161, Div. E, tit. IV, 121 Stat. 1844, 2067 (Dec. 26,

2007); U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110-28, tit. III, ch. 5, 121 Stat. 112, 143 (May 25, 2007)).

- b. Increases in staffing and overtime. (FBI000001; FBI000004; FBI000046; FBI000057; FBI000060; FBI 000069-77; FBI000091; FBI000134; CIS003388-90; CIS003854-59; CIS004013; CIS004268; CIS004661-62; CIS004664-65; CIS006307-24; Yalen Decl. Ex. D).
- c. Streamlining of work flow processes. (FBI000079; FBI000132; FBI000560; FBI000596; FBI000731; FBI000764; FBI000596; CIS004663; CIS004666; CIS004668-80; CIS006307-24).
- d. Removal of categories of documents not expected to contain relevant information from the materials to be searched by the FBI. (FBI000560; FBI000596; FBI000731; FBI000764; Yalen Decl. Ex. D).
- e. Improvements in technology. (FBI000066-67; FBI000176; FBI000177; FBI000450; CIS002581-82; CIS003221; Yalen Decl. Ex. D).

6. Additionally, USCIS has undertaken significant efforts to reduce the effect of the surge on naturalization application processing times. These efforts have included:

- a. Requesting increases in funding. (CIS006221-24).
- b. Increases in staffing and overtime. (CIS004661-65; CIS006384; CIS006388; CIS006389).
- c. Streamlining of work flow processes. (CIS004663; CIS006388).

- d. Improvements in technology and infrastructure (CIS004666, CIS004668-80).

7. USCIS and FBI have repeatedly reported to Congress concerning naturalization processes and the FBI name check. (CIS003896-3905; CIS003963-73; CIS003873-81; CIS003862-69; CIS003976-3982; CIS004263-72; CIS004414-23; CIS004466-74; CIS004614-26; CIS004900-09; CIS005313-5317; CIS006277-82; Testimony of David M. Hardy, Acting Assistant Director, Record/Information Dissemination Section, Records Management Division, FBI, Before the Senate Subcommittee on International Operations and Terrorism, *The FBI Name Check Process* (Oct. 23, 2003), available at <http://www.fbi.gov/congress/congress03/hardy102303.htm>; Testimony of Robert J. Garrity, Jr., Acting Assistant Director, Records Management Division, FBI, Before the House of Representatives, Committee on Government Reform, *The FBI's VISA Name Check Process* (July 10, 2003), available at <http://www.fbi.gov/congress/congress03/garrity071003.htm>.)

8. The former USCIS Ombudsman has submitted reports to Congress that include discussions critical of the role of the FBI name check in the naturalization process. (CIS003910-62; CIS004284-4400; CIS005168-5312). USCIS has submitted to Congress responses to the Ombudsman's reports. (CIS004043-58; CIS005076-106; CIS006225-46.)

9. In the last thirteen months, Congress has twice acted to appropriate additional funding to facilitate the reduction of processing times; to require USCIS and FBI to develop appropriate plans for reducing process times while still conducting all security checks deemed necessary; and to require reports by the agencies. (U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110-28, tit. III,

ch. 5, 121 Stat. 112, 143 (May 25, 2007); Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Div. E, tit. IV, 121 Stat. 1844, 2067 (Dec. 26, 2007)).

10. In response to the mandates of each of these two appropriations bills, USCIS and FBI have submitted to Congress plans for reducing the effect of the FBI name check on naturalization processing times. (CIS006307-24; Yalen Decl. Ex. D).

11. As of April 3, 2008, there were 55,458 naturalization applications in the New York District that had been pending for 180 or more days without a determination. (Declaration of David J. Keevis (“Keevis Decl.”), dated June 19, 2008, ¶ 10).

12. As of June 17, 2008, of these 55,458 individuals, USCIS had made determinations on the applications of an additional 17,108 individuals. (*Id.* ¶ 12).

13. As of April 3, 2008, there were 2,077 naturalization applications in the Southern District of New York that had been pending 120 days or more without a determination since a naturalization examination. (*Id.* ¶ 11).

14. As of June 17, 2008, of these 2,077 naturalization applications, USCIS had made determinations on the applications of an additional 97 individuals. (*Id.* ¶ 13).

Dated: June 19, 2008
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